IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

First Appeal No. 90 of 2001
(Old No. 397 of 1997)

1. State of U.P. through Collector, Dehradun.
2. The Director, Sport College, Lucknow, U.P. …….Defendants/appellants

Vs.

1. Shri Lalita Prasad Kadri S/o Shri Tota Ram
2. Smt. Prem Wati Devi W/o Shri Lalita Prasad
3. Shri Pitamper Dutt
4. Shri Dhasmanand
5. Shri Ravindra Kumar
6. Shri Dinesh Kumar
7. Shri Dinesh Prasad
(Nos. 3 to 7 S/o Shri Lalita Prasad R/o Village Chukhuwala, Dehradun).
…….Claimant Respondent

Learned Standing Counsel for the appellants
Shri Ashok Agarwal, learned counsel for the respondents.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 54 of the Land Acquisition Act, 1894, is directed against the judgment and award dated 28.04.1997, passed by learned Additional District Judge, Dehradun, in land acquisition reference case No. 514 of 1991.

2. Brief facts of the case are that the land of village Raipur, Pravadoon, Dehradun measuring 69.99 acres was acquired by the State of U.P. for the purpose of establishing a Sports College, for which Notification under section 4(1) of the Land Acquisition Act was

published in the local newspapers on 18.03.1988, while notification under section 6 of the Act was published on 30.04.1988m and possession of the acquired properties was taken by the State of U.P. on 30.12.1998. The Land Acquisition Officer relying on the sale deed dated 19.07.1986 executed by Bhupendra and Surendra in favour of Sri M.M. Ghoshal in respect of 0.19 acre land for a consideration of Rs. 20,000/-, fixed the market rate of the land in question at Rs. 1,05,263.15 per acre. Objections were filed by the different owners of the land before the Collector, requesting for reference under section 18 of the Land Acquisition Act to the effect that their land was in every respect fit for residential purposes as it has all the facilities of roads, light and water, bazaar and important institutions of Government of India are located near this land, and employees of these institutions have their residential colonies nearby and that the compensation paid to them is on a very low side base on a wrong exemplar sale-deed of lower value while they should have been paid compensation on the basis of exemplar sale-deed giving highest value, and claimed atleast Rs. 4,00,000/- per acre for their land equally and not different rates according to the different type of land as fixed by the Spl. Land Acquisition Officer. In reply to these reference, it was stated on behalf of the State that the land in question is away from abadi and the alleged institutions of Government of India and at the time of acquisition there was no road towards the land and proper compensation has been paid to everybody on the basis of exemplar sale-deed.

3. After going through pleas of the parties, the Reference Court, framed following issues:-

1. *Whether the compensation granted by the Spl. Land Acquisition Officer is inadequate? If so, what is the appropriate amount of compensation?*
2. *To what relief, if any, is the claimant entitled?*

4. The petitioners in their statements deposed that they have been paid very low compensation while there was every facility of road, water, electricity and police station towards north of their land. Cantonment area and road and developed market are also adjoined. Bank, school, bus stop, Ordnance Factor, Jal Sansthan and residential colonies were also there and the suggestions made to the contrary on behalf of the opposite party are denied. In their oral evidence they claimed compensation at the rate of Rs. 5,00,000/- per acre and filed certificate copies of two sale-deeds of lands near the acquired land showing the rate of land in the village at Rs. 3,92,400/- and Rs. 4,00,000/- per acre, executed on 31.08.1987 and 29.08.1987 respectively. They also filed the guide map published by Survey of India to prove the location of their land. The learned Reference Court after hearing arguments on their behalf, found that the compensation awarded by the Special Land Acquisition Officer was inadequate and proper compensation for the land was Rs. 3,73,000/- per acre. The learned Reference Court also ordered 25% deduction from the actually enhanced amount of compensation due to largeness of area. And it was directed that on this balance amount, the petitioners will be entitled to solatium, additional amount @ 12% with interest at 9% for the first years after taking over

possession by the State and for the rest period at the rate of 15% p.a. till payment.

5. In the appeal before us, it has been argued that the land under acquisition forms part of a large area of land measuring about 69 acres and the Special Land Acquisition Officer had determined market value of the specific plots according to their nature, quality and location and the court below increased the market value of the land to Rs. 3,73,000/- with a deduction of only 25% on the enhanced amount for all kinds of land.

6. A Division Bench of this Court in F.A. No. 81 of 2001 State of U.P. Vs. Sri Devendra Dutt Chamoli, which arose out of the same judgment from the present appeal, has observed as under:-

"However, during arguments the learned Standing Counsel and learned counsel for the respondents compromised the matter and agreed that these appeals be decided after allowing 33% deduction instead of 25% deduction. This deduction of 33% also to our mind appears reasonable. In this contest, a reference may be made to (1996) 9 Supreme Court Cases 640, Basavva (SMT) and others Vs. Special Land Acquisition Officer and others referring to other decisions of Hon'ble Supreme Court, held deduction between 33 ½ to 53% from market value for development charges to be valid and even approved the additional 12% deduction by the High Court above this limit. The Hon'ble Apex Court in the case ***H.P. Housing Board versus Bharat S. Negi and others, reported in (2004) 2 Supreme Court Cases, Page 184*** *has further held that as all the sale instances are of*

small pieces of lands and acquisition is of the large piece of land, a deduction of 33-1 /3% must be made towards development cost. In view of the law laid down by the Apex Court in H.P. Housing Board's case (supra) we, accordingly, hold that the compensation should be paid to the respondent in each case after making deduction of 33-1 /3% from the difference of compensation amount enhanced by the learned Reference Court in respect of market values of the land in question on which solatium, additional compensation and interest shall also be paid as directed by the learned Reference Court."

7. Accordingly, this appeal is allowed partly. The compensation shall be paid to the respondent in each case after making deduction 33- 1/3% instead of 25% deduction. No order as to costs.

(Prafulla C. Pant, J.)

Dt: 7th March, 2006.

Sweta